

Appl. No. 10/748,971
Response dated: September 5, 2006
Reply to Final Office action of June 5, 2006

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REMARKS

Claims 1-7 are pending in the present application. No claims have been canceled, Claims 8 and 9 have been added, and Claims 1, 2, 4, and 6 have been amended, leaving Claims 1-9 for consideration upon entry of the present Amendment.

Claim 1 has been amended to include a limitation to pencil hardness as measured according to National Coil Coaters Association (NCCA) standard II-12, and processability according to NCCA II-19. Support for this amendment can be found at least in the Specification on p. 12, Table 4, on p. 13, lines 3-6, and on p. 3, lines 19-20. No new matter has been introduced by these amendments.

Claim 2 has been amended to read in part "one equivalent" with respect to the polyester resin. Support for this amendment can be found at least in the Specification on p. 5, lines 10-16, and in Examples 1-4. No new matter has been introduced by this amendment.

Claim 4 has been amended to read in part "the total equivalents of glycol in the polyester resin". Support for this amendment can be found at least in the Specification on p. 4, lines 3-5, and in the Synthetic Examples 1-4. No new matter has been introduced by this amendment.

Claim 6 has been amended to read in part "the total equivalents of acid component in the polyester resin". Support for this amendment can be found at least in the Specification on p. 4, lines 13-15, and in the Synthetic Examples 1-4. No new matter has been introduced by this amendment.

Claims 8 and 9 have been added to further claim the invention. Support for Claim 8 can be found in Claim 1 and in the Specification on page 2, lines 24-26 and page 3, lines 19-21. Support for Claim 9 can also be found in Claim 1, and in the Specification on page 11, lines 9-11. No new matter has been introduced with the inclusion of these new claims.

Reconsideration and allowance of the claims is respectfully requested in view of the above amendments and the following remarks.

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Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 2, 4 and 6 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner states that the percentages make these claims vague, and that Claim 2 should be amended to change "an equivalent weight" to "one equivalent". Accordingly, Claim 2 has been amended to include this change, and is appropriately supported described above.

In addition, Claim 4 has been amended to clarify the percentages and specifically show that the glycol is present in the polyester as a percentage of total number of equivalents of glycol that are used to form the polyester, as appropriately supported as described hereinabove. In addition, Claim 6 has been amended to clarify the percentages and specifically show that the acid component is present in the polyester as a percentage of total number of equivalents of glycol that are used to form the polyester.

No new matter has been introduced by these amendments. Accordingly, the claims should now be allowable to the Applicant. Reconsideration and allowance are therefore respectfully requested.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1-7 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by United States Patent No. 4,452,924 ("Radovich"). Applicants respectfully traverse this rejection.

Radovich discloses flexible polyurethane foams having significantly enhanced load bearing properties. Abstract. The polyurethane foams are prepared from organic polyisocyanates and coupled polyol. Col. 1, lines 51-53. The coupled polyol can include a polyester. Col. 2, line 4.

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987).

Radovich discloses, as a desired property of the flexible polyurethane foam, that the foam has significantly improved load bearing properties as measured using ASTM D 3574-81. Radovich, however, does not teach or disclose the pencil hardness or processability

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limitations of amended instant claim 1, and therefore does not disclose all elements of the amended instant claim.

In addition, Radovich discloses preparation of the flexible polyurethane foams in which the coupled polyol is reacted with an organic polyisocyanate in the presence of a blowing agent, a catalyst, and a foam stabilizer. Col. 6, lines 42-45. Radovich extensively discloses these components (blowing agent, catalysts, foam stabilizers, and reaction retarders) in preparing the foams disclosed therein. Col. 6, line 53 to Col. 8, line 47. Further, Radovich discloses use of known methods of preparing foams, including in mold-foaming, cold-hardening foams, and block foaming. Col. 8, line 48 to Col. 9, line 14. Radovich fails to teach or disclose that the flexible polyurethane foams disclosed therein can be prepared in the absence of the blowing agent, catalyst, or foam stabilizer, and further, fails to teach or disclose the preparation of polyurethane-polyols using any non-foam forming polymerization methods or having a structure other than that of a foam. Finally, Radovich discloses the application of the foams to producing upholstery material, cushioning, carpet underlay, and mattresses. Col. 9, lines 15-17. One skilled in the art will appreciate that a film as used in a paint coating has little or no lofted structure, while a foam such as that used in upholstery is a lofted structure possessing gas pockets with either closed-cell or open-cell structure. A polyurethane foam prepared (as in Radovich) to have significantly enhanced load bearing properties is therefore not identical in structure or properties to a polyurethane useful for preparing films, and therefore a foam having increased load bearing properties will not have a hardness or processability that is identical to that of a polyurethane prepared and optimized for film forming characteristics. Thus, Radovich fails to disclose all elements of the instant claims, and fails to disclose or teach that the foam as provided by Radovich would inherently possess the pencil hardness or processability of amended instant claim 1. Thus, for at least the above reasons, Radovich fails to disclose all elements of the instant claims, and does not anticipate the instant claims. Accordingly, reconsideration and allowance are respectfully requested.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance is requested.

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If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

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